

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE DISTRICT OF DELAWARE
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In re:) Chapter 11
5) Case No.
W.R. GRACE & CO., et al,) 01-1139(JFK)
6)
Debtors.) Jointly
7 -----) Administered
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11 DEPOSITION OF EDWIN N. ORDWAY, JR.
12 New York, New York
13 Friday, August 29, 2008
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23 Reported by:
24 MAYLEEN CINTRON, RMR, CRR
25 JOB NO. 18494

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compounding should take place quarterly?

A. There's a provision that addresses default rate interest calculations.

Q. But does that make any reference to "quarterly"?

A. It makes reference to the -- that the calculation -- and I don't have the document in front of me to be precise about the language. That there would be calculations of interest on payments that are past due every time that there was an unpaid balance, which would be quarterly.

If the interest wasn't paid, then there was another calculation of the default charge.

Q. Any other provisions that you can recall?

A. No.

Q. So basically, the difference between the default rate calculation and what would be the base contract rate calculation has two components; one is that the rate of interest is different, and the other is that there's interest on interest, correct?

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A. Correct.

Q. Okay. Turning to the next page of your declaration. It's actually, again, a part of Paragraph 8. You go through the calculation and find that, as you look at it, the interest at issue is \$90 million and you say that the incremental amount being sought by the lenders is 'di minimus'. Do you see that?

A. Yes.

Q. Is that your word?

A. Yes.

Q. Did you choose that word?

A. Yes.

Q. Is that a term that is given meaning in the accounting literature?

A. I'm not sure.

Q. Is that term a term that is given meaning in the standards for valuation?

A. I'm not sure of that either.

Q. We know that it's a legal term, correct?

A. Yes, we do.

Q. Is that, in fact, the source of

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your decision to use the word; that is, a legal context?

A. It's a legal term that is commonly used in my business.

Q. But if we were to go to professional standards and methodologies, accounting standards and methodologies, financial analyses standards and methodologies, we would nowhere find an objective standard stated on the basis of which you can make a conclusion that something is 'di minimus', correct?

A. Correct.

Q. Was it your idea or somebody else's idea to offer an opinion as to whether the interest rate at issue was 'di minimus'?

A. I was asked to provide my opinion.

Q. I know that. But was it your idea or somebody else's idea to actually go ahead and do that kind of analysis or determination; that is, whether the interest at issue was 'di minimus'?

MR. PASQUALE: Objection to form.

A. I was asked to prepare this

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affidavit.

Q. When you went down the road to say is it 'di minimus' or not, was that something that you thought of to do or something that counsel thought to do?

A. It was our finding.

Q. I know it was your finding. But I'm asking --

MR. PASQUALE: He's answering you.

Q. It wouldn't be your finding if it wasn't in here.

A. I wouldn't have said it if it wasn't a finding.

Q. I understand that. But whose idea was it to even go down the path of doing that analysis?

MR. PASQUALE: Objection. Let's be specific. What analysis?

MR. BERNICK: Determine whether the amount of interest at issue was 'di minimus'.

A. We were requested to prepare this by counsel and to provide whether we believe that this was 'di minimus' or not.

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 2 **Q. Okay. So to be fair, then, it was**
 3 **counsel who came up with the idea of looking**
 4 **at the amount of interest at issue, correct?**
 5 A. Yes.
 6 **Q. It was counsel that came up with**
 7 **the idea of making that determination using**
 8 **the comparison between the default rate and**
 9 **the proposed plan rate, correct?**
 10 MR. PASQUALE: Objection to form.
 11 Misstates prior testimony.
 12 MR. BERNICK: I think it is exactly
 13 what he said.
 14 MR. PASQUALE: I don't think it is.
 15 **Q. It was counsel who decided, came up**
 16 **with the idea of using those particular**
 17 **elements -- that is, proposed plan versus**
 18 **default rate -- to define the interest at**
 19 **issue, correct?**
 20 A. I'm not sure if it was our idea or
 21 their idea--
 22 **Q. And it is certainly --**
 23 A. -- to frame it in any manner.
 24 **Q. And it was certainly, Counsel, then**
 25 **who asked you to determine whether that was**

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 2 **Q. Whose idea was that?**
 3 A. I believe that was our thought to
 4 include that in the affidavit.
 5 **Q. So, your point of reference, it was**
 6 **you who decided that the point of reference**
 7 **for making a comparison and determining**
 8 **'di minimus', that the right point of**
 9 **reference would be "benefit available to**
 10 **stakeholders"?**
 11 A. As well -- yes.
 12 **Q. And it's true, is it not, that**
 13 **there is no accounting standard, convention,**
 14 **or methodology that tells you to make that**
 15 **comparison?**
 16 A. That's correct.
 17 **Q. It's true that there is no**
 18 **financial analysis, standard or methodology or**
 19 **convention that tells you to make that**
 20 **comparison, correct?**
 21 A. Correct.
 22 **Q. If somebody else were to make a**
 23 **different comparison or to determine what was**
 24 **'di minimus', you would have no basis using a**
 25 **standard, or method or convention to say what**

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 2 **'di minimus', correct?**
 3 A. Yes.
 4 **Q. Now, because there is no standard**
 5 **for what's 'di minimus', did counsel give you**
 6 **any suggestions about what would be**
 7 **'di minimus'?**
 8 A. No.
 9 **Q. Now, you ultimately end up saying**
 10 **it's 'di minimus' by making a comparison to, I**
 11 **think as you put it, "the benefit now**
 12 **available to all stakeholders," right?**
 13 A. Yes.
 14 **Q. Whose idea was it to talk about**
 15 **what was available to all stakeholders? What**
 16 **does stakeholders even mean?**
 17 A. Stakeholders are all the -- in our
 18 context, the way we wrote this, were all the
 19 parties in interest associated with the
 20 Debtor's cases.
 21 **Q. Whose idea was it to determine**
 22 **whether the amount at issue was 'di minimus'**
 23 **by reference to the benefit available to all**
 24 **stakeholders?**
 25 MR. PASQUALE: Objection to form.

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 2 **they are, correct?**
 3 A. It would be their judgment versus
 4 my judgment.
 5 **Q. And to decide between your judgment**
 6 **versus their judgment, there is no objective**
 7 **standard or reliable method that you could**
 8 **point to right now that would enable you to**
 9 **make the decision, correct?**
 10 A. That's correct.
 11 **Q. Now, it's true, is it not, that**
 12 **when you make the comparison between the**
 13 **interest at issue and the benefit available to**
 14 **the stakeholders, you're really talking about**
 15 **a comparison of the interest at issue and the**
 16 **value that's been generated at Grace, correct?**
 17 A. Yes.
 18 **Q. And it is true, is it not, that the**
 19 **value that has been generated in Grace is**
 20 **reflected, according to your work, in the**
 21 **stock price, right?**
 22 MR. PASQUALE: Objection to form.
 23 A. Yes.
 24 **Q. And basically, the comparison that**
 25 **you draw in determining the significance of**

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the interest at issue, are comparisons between the interest that has accrued to the debt on which you're opining by comparison to the value that's accreted to equity, correct?

MR. PASQUALE: I'm going to object to form. The affidavit goes into more than just that, David, as you well know.

A. It's one of the examples that we use.

Q. Right, you got comparisons to EBITDA, you got comparisons to revenues. At the end of the day, EBITDA and revenue are also reflected in equity value, correct, or not?

A. One would assume that the market value contemplates operating performance, so the answer would be yes.

Q. So fundamentally, at the heart of your determination that the interest at issue is 'di minimus', is a comparison between the interest at issue on the one hand and the value of Grace equity on the other, correct?

A. Not only the value of Grace, but

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also the total value of the Company and the operating performance of the Company.

Q. Operating performance, generally speaking, is reflected in equity; or not?

A. Generally speaking.

Q. But, is it true that equity value, that is stock price, can reflect many, many things other than company performance; true?

A. Correct.

Q. And in fact you provide no methodology in your declaration here that enables us to relate stock price to actual company performance, correct?

A. Correct.

Q. Now, it's true, is it not, that the debt that you're talking about here and the equity securities that you're talking about here, are two totally different kinds of securities?

A. Correct.

Q. Debt accretes value based upon interest, correct?

A. Correct.

Q. Equity accretes value based upon

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performance, not interest, correct?

A. Can I change an answer?

Q. Depends on which one you want to change.

MR. PASQUALE: Yes, you could --

Q. I tell you what, if you want to ask me whether you could change an answer, I appreciate that. But you probably have the prerogative at some point in this process to change it on your own.

So what answer do you want to change?

A. The one from -- the prior question you asked me about the debt instrument, that it accretes value according to its contract rate of interest.

In this instance, too, the debt is traded, there's a market for trading the debt, and the debt improved in value since the filing of the bankruptcy, albeit there were some ups and down, based on the performance of the Company as well.

Q. Sure. As a matter of the debt contract, the security agreement or the

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agreement that underpins the debt security, the value of that debt security, in the sense of the obligation to repay that security, is driven solely by the interest rate and principal amount, correct?

A. And other fees that are contained in the terms of the agreement.

Q. The value of the debt security, in the sense of what is owed to the creditor is not contingent upon how the Company performs, correct?

A. The obligation is not contingent upon the Company's performance, that's correct.

Q. Where in the case of equity, equity does not accrete interest under contract, correct?

A. Correct.

Q. Or under law, correct?

A. Correct.

Q. And equity, by contrast to debt, accretes value based upon the performance of the Company and how that performance then is reflected in the stock price, correct?

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2 A. Among other factors, yes.

3 Q. In fact, independently of market
4 price, you could add private equity that
5 accretes value simply based upon the
6 performance of the Company, correct?

7 A. Correct.

8 Q. If you wanted to make a different
9 comparison using your own work here -- put it
10 differently.

11 If we look at the work that you've
12 done here, you choose to determine whether the
13 interest at issue is 'di minimus' by comparing
14 it to the value that has accreted to Grace's
15 operations, among other things, correct?

16 MR. PASQUALE: Thank you, David.

17 A. Yes, among other things.

18 Q. But if we just wanted to talk about
19 what was owed under the debt instruments,
20 would you say that the amount at issue here is
21 'di minimus' in relationship to the amounts
22 that may or may not be owed under the debt
23 agreements themselves?

24 In other words, you compare the
25 debt to the equity. I'm asking you: If you

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2 making.

3 Q. Have you ever done an opinion on
4 solvency?

5 A. Yes.

6 Q. Is that something that's ordinarily
7 done by people within your field of expertise?

8 MR. PASQUALE: David, I'm going to
9 raise an objection. We had an
10 agreement that questioning would be
11 limited to the declaration.

12 MR. BERNICK: I'm not going to
13 stray from that agreement. You'll see.

14 MR. PASQUALE: But solvency is not
15 in here.

16 MR. BERNICK: That's what I wanted
17 to get you to say, really.

18 Q. You know about solvency opinions,
19 correct?

20 A. Yes, I do.

21 Q. You do not express here an opinion
22 -- in your declaration, you do not express an
23 opinion about solvency, nor do you do a
24 solvency calculation, correct?

25 A. Correct.

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2 just focused on the debt, the amount of
3 interest at issue here is not 'di minimus'
4 compared to what is owed on the debt, correct?

5 A. Correct.

6 Q. In fact, is it true that if we
7 compare the highest number, which is the
8 default interest calculation that you've done,
9 to the base interest rate, even assuming that
10 that base interest rate extends beyond the
11 event of Grace filing for bankruptcy, you're
12 talking about as much as a 40 percent
13 difference in the amount of interest it's
14 owing, correct?

15 A. I think that calculation is right.

16 Q. And that certainly would not be
17 'di minimus', correct?

18 A. The statement of being 'di minimus'
19 was in the context of other financial
20 information. But in the context of the debt
21 itself and the interest itself, I would not
22 call that 'di minimus', if that were the
23 comparison.

24 Q. Excuse me, what?

25 A. If that were the comparison we were

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2 MR. BERNICK: Did I abide by my
3 agreement?

4 MR. PASQUALE: Well, you did. But
5 you asked about solvency questions, and
6 now I feel compelled to say for the
7 record that the judge has deferred any
8 issues of solvency until after the
9 hearing. So we will reserve the right
10 to deal with that issue later if we
11 need to.

12 MR. BERNICK: I don't want to argue
13 about it. I'm making such progress
14 here.

15 MR. COBB: On the record for bank
16 lenders, the judge has deferred certain
17 questions with regard to solvency,
18 calculations thereof, until a later
19 date.

20 MR. PASQUALE: That's more
21 accurate.

22 MR. BERNICK: I'm glad we are in
23 agreement with respect to that.

24 BY MR. BERNICK:

25 Q. Now, you have looked also in your

1 E. Ordway
2 **Q. Have you determined what other, if**
3 **any, contribution the general Unsecured**
4 **Creditors at issue here, what other**
5 **contribution, if any, those creditors made to**
6 **the bankruptcy case?**

7 MR. COBB: Objection to form again.

8 A. Am I aware of other ones?

9 **Q. Yes.**

10 A. Yes.

11 MR. PASQUALE: Let's be clear.

12 Your objection is well taken.

13 MR. COBB: Objection as to form.

14 I'll be precise. The "general
15 Unsecured Creditors at issue here."

16 You can answer if you can.

17 MR. PASQUALE: Do you mean the
18 Committee, David or do you mean the
19 creditor body? I think that's the
20 issue.

21 MR. BERNICK: I make no such
22 distinction. If you want to object to
23 form on the grounds that the Committee
24 is different from the lenders, feel
25 free.

1 **E. Ordway**
2 **Unsecured Creditors made to Grace's stock**
3 **price, correct?**
4 A. Correct.
5 **Q. I don't see anywhere in your**
6 **declaration where you cite any evidence to**
7 **support the proposition that the creditors**
8 **support for acquisition and reinvestment had**
9 **any effect on stock price. Would you agree**
10 **with me that there is nothing in the**
11 **declaration that provides that evidence?**

12 A. I agree.

13 **Q. Isn't it true that Grace had to**
14 **bring proposed acquisitions before the**
15 **Bankruptcy Court for approval?**

16 A. Correct.

17 **Q. Isn't it true that none of those**
18 **acquisitions were contested by anybody?**

19 A. They weren't contested by us as a
20 result of our review and analysis, and belief
21 that it was the appropriate course of action.

22 **Q. But they weren't contested by any**
23 **of the other stakeholders in the case, were**
24 **they?**

25 A. Not that I recall.

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2 **Q. My question is whether you have**
3 **looked to see whether the unsecured lenders in**
4 **this case made any other contribution to the**
5 **bankruptcy case itself other than being**
6 **co-proponents of Grace's Plan of**
7 **Reorganization?**

8 A. Is the question the unsecured
9 lenders or the Creditors Committee? I guess
10 you said --

11 **Q. Either or both.**

12 A. The Committee, I believe, has
13 provided substantial contribution to the case
14 in terms of, as the case has progressed, since
15 its onset with being cooperative with the
16 Debtor.

17 **Q. Is there anywhere in the**
18 **declaration where you state that those**
19 **activities in any way, shape, or form**
20 **contributed to Grace's stock price?**

21 A. No.

22 **Q. Let's talk a little bit about**
23 **creditors' support. Creditor's support for**
24 **Grace acquisitions and reinvestments is one of**
25 **the two contributions which you say that the**

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2 **Q. In fact, all of Grace's**
3 **acquisitions, everybody agreed, were prudent**
4 **and appropriate acquisitions to make, correct?**

5 A. I'm not sure what the other party's
6 conclusions were, but they didn't object.

7 **Q. So, is what you're saying that the**
8 **contribution of general Unsecured Creditors**
9 **when it comes to creditors' support, is that**
10 **they decided not to object?**

11 A. They decided to not object.

12 **Q. What about reinvestment? Are you**
13 **aware of any reinvestment that Grace made?**
14 **All Grace's financial, including CapEx, were**
15 **made available to the Committee and different**
16 **stakeholders, correct?**

17 A. Correct.

18 **Q. Are you aware of any issue that was**
19 **ever raised with respect to the reinvestment**
20 **of Grace earnings into the Grace business?**

21 A. There were issues raised, but I
22 think concluded to our satisfaction over time.

23 **Q. But did anyone at any point in the**
24 **bankruptcy ever object to any of Grace's**
25 **reinvestments?**

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2 A. Not that I recall.

3 **Q. So they were essentially**
4 **noncontroversial, weren't they?**

5 A. I think it was controversial in the
6 sense of the Company making acquisitions
7 during a bankruptcy, but we accepted that they
8 were appropriate in the circumstances.

9 **Q. So again, the contributions that**
10 **the creditors made, insofar as reinvestment**
11 **was concerned, was simply a decision not to**
12 **object, correct?**

13 A. Correct.

14 **Q. So when we're sitting here today,**
15 **you say that the creditors' support with**
16 **respect to acquisitions and reinvestment**
17 **created a positive contribution to stock**
18 **value, all you're really referring to is that**
19 **you might have had an impact on Grace's stock**
20 **value if you had decided to object to the**
21 **acquisitions or the reinvestments, correct?**

22 MR. PASQUALE: Objection to form.

23 A. It would have been detrimental to
24 the value of the Company, highly likely, if we
25 objected to some of these acquisitions.

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2 idea.

3 **Q. Who decided how that analysis**
4 **should be done; you or counsel?**

5 A. I believe it was our idea as to how
6 this calculation and presentation should be --
7 should be made to illustrate that point.

8 **Q. Well, but when it came to**
9 **creditors' support, what we just got done**
10 **talking about, was it your idea to identify**
11 **creditors support as a potential contributor**
12 **to stock price or counsel's idea?**

13 A. The creditors' support as it
14 relates to the reinvestments and acquisitions?

15 **Q. Yes.**

16 A. That was my idea.

17 **Q. And the use of lender's cash, was**
18 **that your idea or counsel's idea?**

19 A. That may have been counsel's idea.
20 I don't recall.

21 **Q. Now, in neither instance, that is**
22 **neither in respect to creditors' support nor**
23 **in respect to use of lender's cash, in neither**
24 **case do we see any quantification of the**
25 **contribution, correct?**

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2 **Q. And you regard that as being a**
3 **favorable contribution to the case, that you**
4 **simply failed to get in the way?**

5 MR. PASQUALE: Objection to form.

6 A. Yes, I do.

7 **Q. Let's talk about money, the use of**
8 **cash, which appears on, I think, the next**
9 **page.**

10 It says, "The equity holders of the
11 Debtors have benefited substantially as
12 compared to the lenders, in part from the use
13 of lender's cash." Do you see that?

14 A. Yes.

15 **Q. Now, that has got two components,**
16 **one is that there was a benefit to the equity**
17 **holders, and the second, that the benefit was**
18 **substantial, right?**

19 A. Yes.

20 **Q. Incidentally, whose idea was it to**
21 **take a look at whether the general Unsecured**
22 **Creditors had created a positive contribution**
23 **to Grace's stock performance? Was that your**
24 **idea or counsel's idea?**

25 A. I think it may have been counsel's

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2 A. I don't have it calculated in here
3 in this paragraph, but it's a half a million
4 dollars worth of lending, plus 400 and change
5 of interest that hasn't been paid.

6 **Q. I just asked you whether we see**
7 **anywhere in here a methodology that you used**
8 **in determining what contribution, if any, that**
9 **cash had?**

10 A. No.

11 **Q. Now, if we wanted to determine --**
12 **with respect to creditors' support, if we**
13 **wanted to determine the impact that that had**
14 **on stock price, can you point to any**
15 **accounting or financial analysis, methodology**
16 **or standard that you used in determining the**
17 **creditors' support did have a positive impact**
18 **on stock price?**

19 A. I don't have a calculation to
20 demonstrate that.

21 **Q. Do you have any kind of standard,**
22 **methodology, or stated methodology to**
23 **demonstrate it, on creditors' support?**

24 A. There isn't a standard methodology
25 for determining a precise quantification of

1 E. Ordway
2 the benefit of the stock price from the
3 lender's cash.

4 **Q. I'm talking about creditors'**
5 **support.**

6 MR. PASQUALE: More generally.

7 **Q. Creditors' support for acquisitions**
8 **and reinvestments.**

9 A. There isn't a precise methodology
10 for determining that.

11 **Q. There isn't any methodology for**
12 **determining that, correct, this is a question**
13 **of your judgment?**

14 A. It would be a question of judgment.

15 **Q. When it comes to lender's cash. I**
16 **want to go through lender cash a little bit.**

17 First of all, we don't see here the
18 deployment of any standard, methodology or
19 objective test in saying the use of lender's
20 cash benefited the equity holders or the
21 Debtor, correct?

22 A. Correct.

23 **Q. Same thing with regard to the word**
24 **"substantially," it says that the equity**
25 **holders benefited substantially. Was that**

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2 A. Correct.

3 **Q. And we know that the compensation**
4 **for the use of that principal with simple**
5 **interest, would be about the \$287 million**
6 **number, right?**

7 A. That sounds correct. That sounds
8 about right.

9 **Q. Now, if we deal with default,**
10 **default has got two components to it, one is a**
11 **different rate, and the other is compounded,**
12 **correct?**

13 A. Correct.

14 **Q. If we just talk about the default**
15 **rate applying before we get to interest on**
16 **interest, just apply the higher default rate,**
17 **am I right that that would take the interest**
18 **up approximately \$15 to \$18 million to about**
19 **\$304 million?**

20 A. I don't know that calculation, if
21 that's right or wrong.

22 **Q. So, if we have principal of**
23 **\$500 million, and the unpaid interest on the**
24 **principal, not interest on interest, but**
25 **interest on the principal, that would be**

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2 **your word or counsel's word?**

3 A. My word.

4 **Q. Is that a word that was derived**
5 **from the accounting literature or the**
6 **financial analysis literature, or that's just**
7 **a general word in your vocabulary?**

8 A. It's a general word in my -- it is
9 my judgment to use that word.

10 **Q. That there is no objective measure**
11 **or test that you used to determining**
12 **substantial or insubstantial, correct?**

13 A. No.

14 **Q. Is my statement correct, that there**
15 **was no objective test that you used?**

16 A. Sorry. Yes.

17 **Q. Now, when we talk about the money,**
18 **the cash that the lenders provided to Grace**
19 **that Grace used, we have the principal of \$503**
20 **million, principal plus accrued interest as of**
21 **the date of filing, correct?**

22 A. Correct.

23 **Q. Now, the loan documents call for**
24 **compensation for the use of that principal**
25 **with simple interest, correct?**

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2 **something in the area of between \$280 and**
3 **\$300 million approximately?**

4 MR. PASQUALE: Object to form.

5 A. I'm not sure of your calculation.
6 But it sounds order of magnitude, like it
7 might be good for this discussion.

8 **Q. What I'm getting at is: When we**
9 **talk about use of lender's cash, we have**
10 **principal, we have interest on the principal**
11 **and we have interest on interest. Those are**
12 **three different things, correct?**

13 A. Correct.

14 **Q. And all I'm trying to do is get a**
15 **rough idea of the three tranches: The**
16 **principal plus accrued interest as of the date**
17 **of the filing is roughly \$500 million, the**
18 **unpaid interest on principal -- simple**
19 **interest, not interest on interest, interest**
20 **on principal -- is another 300-odd-million**
21 **dollars, and then we have the interest on**
22 **interest component which takes you as high up**
23 **as the \$414 million, right?**

24 MR. PASQUALE: Objection. Asked
25 and answered.

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A. I can't confirm precisely your number other than the 414 and the 500-and-three-and-a-half, which is the principal plus pre-petition interest.

Q. So when you say that really it is the equity holders and the Debtors used the lender's cash, how do you know that they used unpaid interest on principal?

A. I don't understand the question.

Q. Well, unpaid interest on principal, you have the principal of \$500 million, you then have monies above that all the way up to another \$400 million, what portion of that \$400 million that you say would be owing to the Unsecured Creditors as interest, either interest on principal or interest on interest, how much of that do you know that the Debtor actually used in its operations?

A. It would be -- I suppose we can calculate it by looking at change in cash balances from the beginning of the case through now, for example. The difference -- first of all, cash is fungible, but presumably the balance -- the difference between that

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is a significant amount of money and that it exceeds the change in the cash on-hand from the beginning of the case till now. So it is implicit that that difference, a portion was used to fund operations. And certainly during the case it was used to fund operations.

Q. I'm not talking about just the interest on principal or interest on interest. Not the original \$500 million.

MR. PASQUALE: So he is going outside the declaration to ask you that question.

MR. BERNICK: To the contrary.

MR. PASQUALE: That's what he wrote.

MR. BERNICK: It is all embedded. That's what I'm trying to find out.

Q. You said that the equity holders used the lender's cash. I'm construing lender's cash to be the broadest it could possibly be, which is principal, interest on principal and interest on interest.

I'm simply asking whether you know that statement to be true with respect to

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would have been used in operations, to support operations.

Q. But that's what I'm asking: Do you know how much of the lender's interest, unpaid interest, actually got used in operations? Does that anywhere appear in the affidavit?

A. No.

Q. It's true, is it not, that Grace has had substantial cash balances, correct?

A. Yes.

Q. That cash balance as of the end of June of this year is about \$400 million and that's after some very substantial payments, correct?

A. Yes.

Q. Do you know that Grace's cash balance ever was lower than the unpaid interest on interest?

A. I don't know.

Q. Well, if you don't know, how do you know that Grace actually used the lender's -- not the principal, but actually used unpaid interest in order to fund its growth?

A. I know that taken over time, this

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interest on principal or interest on interest, based on what is in your declaration?

A. I don't have a calculation to precisely demonstrate how much of the unpaid interest, whether it's interest on interest, was, in effect, used for operations other than generally it had to have been.

Q. No quantification at all appears in the declaration, correct?

A. No.

Q. You can't tell whether it was substantial or 'di minimus', correct, as an expert?

A. The reason that we've used the word "substantial" is because the sum is \$414 million, that's a substantial number.

Q. Fair enough. But you cannot, as an expert, say "substantial" when it comes to the actual cash that was actually used in operations because you don't know how much that was, correct?

A. I don't know how much that was at this point in time, although that's determinable, certainly.